

1 BEFORE THE SHORELINES HEARINGS BOARD
2 STATE OF WASHINGTON

3 IN THE MATTER OF A SHORELINE)
4 VARIANCE DENIED TO LINDA KURT)
5 and MICHAEL JOHNSRUD BY THE)
6 CITY OF SEATTLE,)

SHB No. 89-26

5 LINDA KURT AND MICHAEL JOHNSRUD,)

6 Appellants,)

7 v.)

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

8 CITY OF SEATTLE and State of)
9 Washington DEPARTMENT OF ECOLOGY,)
10 Respondents.)

11 The Shorelines Hearings Board held a hearing on February 23, 1990
12 on Linda Kurt and Michael Johnsrud's appeal which contests the City of
13 Seattle's denial of a shoreline variance permit for a deck at 6317
14 Beach Drive, S.W., in West Seattle. Present for the Board were:
15 Chair Judith Bendor, presiding; Members Wick Dufford, Nancy Burnett,
16 Tom Cowan, and Mary Lou Block. Member Harold Zimmerman has reviewed
17 the record. Appellants Kurt and Johnsrud represented themselves.
18 Respondent City of Seattle was represented by Assistant City Attorney

1 Pamela K. James. Court Reporter Lettie Hylarides with
2 Evergreen Court Reporting took the proceedings.

3 Having heard testimony and argument, reviewed exhibits, and
4 conferred, the Board makes these:

5 FINDINGS OF FACT

6 I.

7 In 1986 Michael Johnsrud inherited a single family house from his
8 father's estate. The modest two-story house is located at 6317 Beach
9 Drive S.W. in West Seattle. Appellant Johnsrud first lived there in
10 1943. The present house was built before the 1971 Shoreline Management
11 Act became law. Mr. Johnsrud had not resided there for many years
12 prior to moving there in 1986.

3 The house is located on a lot approximately 180 feet deep by
14 about 55 feet wide, facing west to Puget Sound. The living quarters
15 are on the second floor, with the first floor composed of a basement
16 and storage. There is no interior staircase between the floors; they
17 are accessed by an exterior staircase. Outside, to the west of the
18 first floor, is a ground-level hot tub and small patio. In 1959 a
19 five-foot wide deck was built on the west side of the second story
20 along the entire width of the house.

21 The house, including this five-foot deck, is located 60 feet from
22 the shoreline. The house is setback 21 feet from the south property
23 line. This deck is inadequate to serve the typical functions of an
24 outdoor residential deck because of its narrowness.

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1 II.

2 Appellants' immediate neighbor to the south is James Pryor. His
3 two-story house also faces west, and has an expansive view of Puget
4 Sound. A deck runs the width of his house at the first floor level, a
5 few steps above the ground. The entire house, including the deck, is
6 setback 63 feet from the shoreline. Mr. Pryor has lived in his house
7 for about 13 years. Pampas grass and laurel have been planted between
8 the houses.

9 III.

10 To the immediate north of the Kurt/Johnsrud residence is a house
11 setback 70 feet from the shoreline, as measured from its first-floor
12 deck. This house was called the "hidden house" during the hearing,
13 due to its location and the abundant vegetation surrounding it.

14 The Kurt/Johnsrud house is more waterward than either of the two
15 adjacent neighbors' homes.

16 IV

17 The neighborhood has a mix of houses, from modest bungalows to
18 expansive multi-storied homes. Many houses have decks. Many homes
19 were built decades ago and are located close to the shoreline. In
20 some cases there are old structures waterward of the houses.

21 V

22 Since the 1930s or 1940s the four houses north of the
23 Kurt/Johnsrud residence have had separate legal descriptions. The
24

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(3)

1 first house immediately north is on its own parcel. The house north
2 of this "hidden house" is more waterward than the Kurt/Johnsrud house.

3 In 1988 a lot boundary adjustment was done for several of these
4 houses to the north. This adjustment did not change the number of
5 lots.

6 VI

7 In 1986 Mr. Johnsrud mailed a building permit application to the
8 City to expand the five-foot deck by nine feet at its widest point.
9 After talking with staff, it was his impression that the application
10 would be approved and he began to build the deck. However, the
11 application was denied and he did not appeal this denial. Appellant
12 continued to build the deck, and made it larger than shown in his
3 application. At some point in time, he cut a diagonal piece off the
14 corner nearest to Mr. Pryor, in an effort to minimize the view impact.

15 VII

16 In August 1988, in response to a complaint from Mr. Pryor, the
17 City sent a Notice of Violation for building in the shoreline without
18 a shoreline permit. Ms. Kurt and Mr. Johnsrud then applied for a
19 retroactive shoreline variance permit. Two objections were received.
20 On April 4, 1989 the City denied the permit, which was appealed to
21 this Board and became SHB 89-26.

22 At the present time the deck is incomplete; there is no railing.
23
24
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VIII

Appellants, during the course of the hearing, stipulated that they would reduce the deck expansion so that it did not exceed the dimension on the building permit application, and the deck would also be reduced to not be more westward than the existing support posts. As a result the entire deck would only be 11 feet wide, with less width at the diagonal facing the Pryor residence. (Exh. R-4; This reconfigured deck is referred to as the proposed deck.)

IX

It has been suggested that a deck could be constructed on the southern side of the house, next to the Pryor property. This "alternative" does not provide a waterward view, thus not serving the primary objective. Moreover, interior alterations to the house would be necessary, causing further problems for the homeowner. It is also likely that this alternative would intrude more into Mr. Pryor's privacy. We find that this alternative is not viable.

X

It is also been suggested that the ground level patio is an amenity comparable to the elevated deck. Again, we disagree under the facts of this case. Because there is no interior staircase and due to the living quarters' configuration on the second floor, this "alternative" presents access difficulties.

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XI

We find that the proposed deck will not impact the northern houses' waterward views. The expansion will impact Mr. Pryor's waterward views to a very minor degree, provided that the railing to be constructed is only the minimum necessary to satisfy the safety requirements of the building code. An expansive view of the water will still remain.

XII

Any Conclusion of Law which is deemed a Finding of Fact is adopted as such.

From these Findings of Fact, the Board comes to these Conclusions of Law:

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these parties and these issues. RCW 90.58.180.

II

The applicable Seattle Shoreline Master Program ("SMP") is codified at Chapter 23 of the Municipal Code.

The proposed deck project is located in an Urban Residential Shoreline Environment as designated by the SMP. Decks adjoining residences are permitted. But if they intrude into the setback, a variance permit is required.

1 The relevant setback requirement is governed by the overall SMP
2 requirement for residential setbacks found at 23.60.198B.1:

3 Residences on waterfront lots shall not be located
4 further waterward than adjacent residences. If there
5 are not other residences within one hundred feet
6 (100'), residences shall be located at least
twenty-five feet (25') back from the line of ordinary
high water.

7 Director's Rule 30-88 is applicable. Its purpose is to set forth
8 uniform techniques to assist in determining setbacks, "the closest
9 distance to the shoreline permitted for new decks or additions to
10 decks." (At A. 4.) The rule further states:

11 6. "Adjacent Residence" means any existing or approved
12 principal structure(s), located both within the Shoreline
13 District (within 200' of the shoreline) and within one
14 hundred feet of any portion of the subject residence or
15 site. Existing or approved residences located on the
16 same lot as the subject residence or site shall not be
classified as adjacent for the purposes of this Rule.
When there is more than one principal structure on a
lot. The adjacent residence for setback determination
purposes shall be the principal structure closest to the
shoreline, or as determined by the Director.

17 B. Shoreline Setback Required

18 No residence or portion thereof shall be located shoreward of
19 the residential setback line and no deck or portion thereof
shall be located shoreward of the deck setback line [...]

20 C. Methods of Determining the Residential Setback Line and Deck
21 Setback Line

22 [. . .]

23 2. Method when there are adjacent residences on each side
24 and the shoreline is regular.

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(7)

- 1 i. The residential setback line shall be determined by
2 drawing a line between the nearest shoreside corners
3 of the closest adjacent residences located on either
4 side of the site, provided, however, that when such
5 building faces are irregular, the line shall be drawn
6 between the corners located closest to the
7 shoreline. See Diagram 2.
- 8 11. The deck setback line shall be determined by drawing
9 a line between the nearest shoreside corners of
10 existing or approved decks of the closest adjacent
11 residences located on either side of the site. See
12 Diagram 2. Where there is an existing or approved
13 deck on only one side of the site, the deck setback
14 line shall be drawn from the nearest corner of that
15 deck to the nearest shoreside corner of the wall of
16 the other adjacent residence. See Diagram 3. When
17 neither adjacent residence has a shoreside deck, the
18 deck setback line shall be the residential setback
19 line. When building or deck faces are irregular, the
20 line shall be drawn between the deck or structure
21 corners located nearest the shoreline.

22 III

23 We conclude that for purposes of determining setback, the house
24 to the immediate north is one of the "adjacent residences". That
25 northern house has its own separate lot, and is not on the same lot as
26 the three houses to its north. The boundary adjustment did nothing to
27 change that situation. The Pryor house is the other adjacent house to
the south of the Kurt/Johnsrud house.

Using these two adjacent houses to calculate the setback leads to
the conclusion that the Kurt/Johnsrud house itself (which existed
before the Shoreline Management Act), and the proposed deck are within
the setback. A shoreline variance permit is therefore required for
the proposed deck expansion.

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Such variance may be granted if the appellants can demonstrate that all the applicable provisions of WAC 173-14-150 are met.

Subsection (2) states:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the master program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by the master program;

(b) That the hardship described in WAC 173-14-150 (2)(a) above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;

(c) That the design of the project is compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment;

(d) That the requested variance does not constitute a grant of special privileges not enjoyed by the other properties in the area, and is the minimum necessary to afford relief; and

(e) That the public interest will suffer no substantial detrimental effect.

It is not contested that appellants' proposal meets the requirements of WAC 173-14-150(2)(b), that the hardship is specifically related to the property and is not due to their actions. The house is already located within the setback, having been built decades ago. See, The Boat Yard v. City of Seattle, (SHB 86-10) (1986). This situation is in sharp contrast to the facts found in 4101/Beach Drive Homeowners' Association v. City of Seattle, SHB 84-49

1 (1985), where a new home was built after the Shoreline Management Act
2 came into effect, and was built exactly on the setback line. Then the
3 owner requested a variance for a deck.

4 VI

5 We conclude, in the context of the facts of this particular case
6 and this neighborhood, that the modest waterward deck as proposed, off
7 the living quarters of the Kurt/Johnsrud residence, is a reasonable
8 use of the property. WAC 173-14-150(2)(a). This use is not otherwise
9 prohibited by the Shoreline Master Program. The strict application of
10 the setback requirement would significantly interfere with this
11 reasonable use and create a hardship.

12 VII

13 We conclude that the proposed deck (see Findings of Fact VIII and
14 XI, above), is the minimum necessary to provide relief. The design of
15 the deck, as so conditioned, is compatible with other permitted uses
16 in the area, presents insignificant effects to adjacent properties,
17 and does not adversely affect the shoreline environment. WAC
18 173-14-150(2)(c). It is not a grant of special privilege, raised
19 decks being common in this area. Neither a sideyard deck nor a ground
20 level patio have been demonstrated to be viable alternatives. WAC
21 173-14-150(2)(d). (See Findings of Fact IX and XI, above.)

22 VIII

23 The minor impact on Mr. Pryor's view is not a substantial
24 detrimental effect to the public interest. WAC 173-14-150(2)(e).

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There was no evidence presented that the deck's intrusion into the setback would adversely affect the character of the shoreline environment. To the contrary, this second-story deck is above a concrete patio and hot tub. The shoreline has already been substantially altered in this area. The proposed deck is compatible with other permitted activities in the area.

IX

WAC 173-14-150 at (4) requires that the cumulative impacts of granting similar variances be considered. Such requirement, however, cannot be elevated into an absolute prohibition where the local Shoreline Master Program does not otherwise prohibit such use.

We conclude under the narrow facts of this case, that the cumulative impacts will not be significant.

X

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. From these Conclusions of Law, the Board enters this:

ORDER

The denial of a variance permit to Linda Kurt and Michael Johnsrud is REVERSED and the case is REMANDED for issuance of a permit in conformance with this opinion.

DONE this 1st day of May 1990.

SHORELINES HEARINGS BOARD

Joseph A. Bendor
JUDITH A. BENDOR, Presiding

Wick Dufford
WICK DUFFORD, Member

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Member

Nancy Burnett
NANCY BURNETT, Member

Thomas R. Cowan
THOMAS R. COWAN, Member

Mary Lou Block
MARY LOU BLOCK, Member

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